IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

WP(C).No. 30066 of 2006(D)

PETITIONER:

HUTCHISON ESSAR CELLULAR LIMITED,
XL-5115, ASHIS BUILDING, SHANMUGHAM ROAD,
COCHIN-682 031, REP. BY ITS MANAGER LEGAL,
RAJESH MELETH VEETIL.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR

RESPONDENTS:

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1. THE OMBUDSMAN FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY SECRETARY TO LOCAL SELF GOVERNMENT INSTITUTIONS, SECRETARIAT, THIRUVANANTHAPURAM.

3. SECRETARY TO GOVERNMENT, URBAN AFFAIRS, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

4. DIRECTOR OF URBAN AFFAIRS, THIRUVANANTHAPURAM.

5. DIRECTOR OF MUNICIPALITIES, THIRUVANANTHAPURAM.

6. DIRECTOR OF PANCHAYATHS, THIRUVANANTHAPURAM.

7. VITHURA GRAMA PANCHAYAT, VITHURA P.O., THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY.

8. ADAT GRAMA PANCHAYAT, PURNATTUKARA P.O., THRISSUR-680 551, REP. BY ITS SECRETARY (SPECIAL GRADE).

9. VADAKKEKADU GRAMA PANCHAYAT, NJAMANEYANGAD P.O., 679 563, REP. BY ITS SECRETARY (SPECIAL GRADE).

R2 & R3 BY GOVT. PLEADER SMT.T.B.REMANI
R7 BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.PIRAPPANCODE V.S.SUDHIR
SRI.HARISH HARI
SRI.M.UNNIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No.30066 of 2006 D

Dated this the 3rd day of April, 2007.

JUDGMENT

A mobile telephone company is the petitioner and the relief sought for are quashment of Exts.P1 to P4 orders passed by the panchayats which are respondents 7, 8 and 9.

2. A perusal of the impugned orders shows that they have been passed on the basis of a general order issued by the Hon'ble Ombudsman. Under the general order, the Ombudsman has directed the Local Authorities to insist upon the Mobile Telephone Companies producing No Objection Certificates from the Atomic Energy Commission regarding the installation of mobile telephone tower. This court had occasion to consider the issue in several cases. A Division Bench of this court in **Reliance Infocom Ltd v. Chemanchery**

Grama Panchayat {2006(4) K.L.T. 695} has decided the issue. The Atomic Energy Regulatory Board, has submitted an affidavit before the Bombay High Court in a similar case and the stand taken by the Atomic Energy Regulatory Board that mas radiation emanated by the Mobile Telephone Towers is practically nil when compared to radiation from Radio Towers. The World Health Organisation also is of the same opinion. The Division Bench in **Reliance Infocom**'s case has actually took into account the affidavit submitted by the Atomic Energy and Regulatory Board before the Bombay High Court and held that radiation from BTS installed by mobile telephone companies is practically nil.

3. Considering the judgment of the Division Bench and the stand taken by the Atomic Energy Regulatory Board and by the World Health Organisation,

it has to be found that Exts.P1 and P4 are bad. In fact, this court had occasion to quash similar orders.

Accordingly, this writ petition is allowed of quashing Exts.P1 to P4. The petitioner is permitted to go with the installation and commissioning of the Mobile Telephone Towers within the areas of respondents 7, 8 and 9, if the petitioner is having consent and certificates which are statutorily necessary.

Sd/-

(PIUS C. KURIAKOSE)

JUDGE

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P.S. To Judge

PIUS C. KURIAKOSE, J.

W.P.(C) No.30066 of 2006 D

JUDGMENT

3rd April, 2007.